

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

Fernando D. Rice,

Petitioner,

v.

Case No. 1:06cv815

Warden, Lebanon Correctional Institution,

Judge Michael R. Barrett

Respondent.

**ORDER**

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed December 10, 2007 (Doc. 12). Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). On December 13, 2007, Petitioner filed a Motion for Extension of Time within which to file his objections to the Report and Recommendation by the Magistrate. Petitioner's Motion was subsequently granted by notation, providing Petitioner an additional thirty (30) days to object. To date, no objections to the Magistrate Judge's Report and Recommendation have been filed.

Having reviewed this matter *de novo* pursuant to 28 U.S.C. § 636, the Court finds the Magistrate Judge's Report and Recommendation to be correct.

Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED** dismissing the Petition with prejudice. A certificate of appealability should not issue with respect to petitioner's claims for relief under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). With respect to any application by petitioner to proceed on appeal in *forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation would not be taken in "good faith," and therefore **DENIES** petitioner leave to appeal in *forma pauperis* upon a

showing of financial necessity. See Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

This action is closed.

**IT IS SO ORDERED.**

bac

January 25, 2008

/s/ Michael R. Barrett  
Michael R. Barrett, Judge  
United States District Court